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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1257

DESERT CHRYSLER-PLYMOUTH, INC. and PETE KUBENA,

Petitioners,

vs.

CHRYSLER CORPORATION,

Respondent.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Nevada.

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Question Presented.

Is the decision below of the Nevada Supreme Court, which rests entirely upon the Separation of Powers provisions of the Nevada Constitution, based upon independent and adequate state grounds?

Reasons for Denying the Writ.

The Nevada Supreme Court Decided This Case on Adequate and Independent State Grounds, Specifically, Interpretation of the Nevada Constitution.

In 1977, the Nevada Legislature amended Nevada's motor vehicle franchise statutes by adding 20 sections to Chapter 482 of the Nevada Revised Statutes. The Nevada Supreme Court subsequently found four of

these sections violative of Nevada's Constitution, *Desert Chrysler-Plymouth, Inc. v. Chrysler Corp.*, 95 Nev. Adv. Op. 175, 600 P.2d 1189 (1979). The remaining sections were held severable from the invalid sections.

The provisions held invalid (See Appendix D to Petition for Writ of Certiorari) placed non-judicial duties upon Nevada district court judges. The statutes required a district court judge to perform prelicensing, ministerial, fact-finding functions—administrative functions—rather than resolving an actual case or controversy — judicial functions. See Nev. Rev. Stat. §482.36415.

Because the statutes placed administrative duties on the judiciary, the Nevada Supreme Court held them violative of the separation of powers doctrine of the Nevada Constitution, Article 3, Section 7, and Article 6, Section 6 (See Petition for Writ of Certiorari, pp. 3, 4, and Appendix B), citing *Galloway v. Truesdell,* 83 Nev. 13, 422 P.2d 237 (1967).

Separation of powers was not an issue in *New Motor Vehicle Board v. Orrin W. Fox Co.*, 439 U.S. 96 (1978) and Petitioner's reliance on that case is misplaced. Unlike the Nevada statute, the California enactment involved in *Fox* properly placed the fact-finding, pre-licensing determinations with an administrative agency which was adequately equipped to independently investigate the facts and hold hearings. Cal. Veh. Code §3062 (West Supp. 1977-1978). The Nevada Supreme Court recognized that many other states enacted recent legislation dealing with the establishment of new automobile franchises. It found the Nevada statute to be the only one that assigned purely administrative functions to the judiciary. Thus, this case has no impact on the statutes of other states.

Precisely because of this distinction between the Nevada statutes and the California and other states' statutes dealing with new automobile franchises, this case was decided on adequate and independent state grounds, and the Nevada Supreme Court never reached the various federal questions raised below. This Court will not review a state court decision resting upon adequate and independent state grounds, *Herb v. Pitcairn,* 324 U.S. 117 (1944). In *Terrace v. Thompson,* 263 U.S. 197 (1923), this Court stated:

> The question of whether or not a state statute conflicts with the Constitution of the state is settled by the decision of its highest court. [Citation omitted.] This court is without authority to review and revise the construction offered to a state statute as to a state matter by a court of last resort of the state.

263 U.S. at 224. *Accord, Montana Ex Rel. Haire v. Rice,* 204 U.S. 291 (1907).

Because the Nevada Supreme Court decision in this case rests entirely upon interpretation of the Nevada Constitution, certiorari should not be granted.

Conclusion.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent.